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EXAMINER

NEURAUTER, GEORGE C

ART UNIT	PAPER NUMBER
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2143

DATE MAILED: 12/29/2003

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

09/515,297

Applicant(s)

RICHTER, CLARK ADAM

Examiner

George C Neurauter, Jr.

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --
Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 06 October 2003.
- 2a) ☐ This action is FINAL. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 28-56 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 28-56 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
- Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- 11) ☐ The proposed drawing correction filed on _____ is: a) ☐ approved b) ☐ disapproved by the Examiner.
- If approved, corrected drawings are required in reply to this Office action.
- 12) ☐ The oath or declaration is objected to by the Examiner.

Priority under 35 U.S.C. §§ 119 and 120

- 13) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. _____.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- * See the attached detailed Office action for a list of the certified copies not received.
- 14) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. § 119(e) (to a provisional application).
- a) ☐ The translation of the foreign language provisional application has been received.
- 15) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121.

Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO-1449) Paper No(s) _____
- 4) ☐ Interview Summary (PTO-413) Paper No(s) _____
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other: _____

DETAILED ACTION

Continued Examination Under 37 CFR 1.114

1. A request for continued examination under 37 CFR 1.114, including the fee set forth in 37 CFR 1.17(e), was filed in this application after final rejection. Since this application is eligible for continued examination under 37 CFR 1.114, and the fee set forth in 37 CFR 1.17(e) has been timely paid, the finality of the previous Office action has been withdrawn pursuant to 37 CFR 1.114. Applicant's submission filed on 6 October 2003 has been entered.

Response to Arguments

2. Applicant's arguments filed 6 October 2003 have been fully considered but they are not persuasive.

3. In response to applicant's argument that the examiner's conclusion of obviousness is based upon improper hindsight reasoning, it must be recognized that any judgment on obviousness is in a sense necessarily a reconstruction based upon hindsight reasoning. But so long as it takes into account only knowledge which was within the level of ordinary skill at the time the claimed invention was made, and does not include knowledge gleaned only from the applicant's disclosure, such a reconstruction is proper. See *In re McLaughlin*, 443 F.2d 1392, 170 USPQ 209 (CCPA 1971).

4. In response to applicant's argument that there is no suggestion to combine the references, the examiner recognizes that obviousness can only be established by combining or modifying the teachings of the prior art to produce the claimed invention where there is some teaching, suggestion, or motivation to

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do so found either in the references themselves or in the knowledge generally available to one of ordinary skill in the art. See *In re Fine*, 837 F.2d 1071, 5 USPQ2d 1596 (Fed. Cir. 1988) and *In re Jones*, 958 F.2d 347, 21 USPQ2d 1941 (Fed. Cir. 1992). In this case, as shown in the previous Office Action, Werb expressly discloses that "machine-readable codes" or tags used in the disclosures of Card are improved upon by the RFID tag [column 1, lines 24-25]. Therefore, this disclosure in Werb would have motivated one of ordinary skill in the art to combine the teachings of both references based on the express disclosure of how the disclosures of Card are improved by the disclosure of Werb.

5. In response to applicant's argument that Card, Werb, and UPS do not disclose receiving information stored in a RFID memory including a location on a computer network corresponding to the RFID tag and communicating with the location, the test for obviousness is not whether the features of a secondary reference may be bodily incorporated into the structure of the primary reference; nor is it that the claimed invention must be expressly suggested in any one or all of the references. Rather, the test is what the combined teachings of the references would have suggested to those of ordinary skill in the art. See *In re Keller*, 642 F.2d 413, 208 USPQ 871 (CCPA 1981).

In this case, Card expressly discloses that tracking numbers are used on a machine-readable tag such as bar codes to uniquely identify a package and its associated data in which the data is used to track packages as they move throughout the packages distribution system is known in the art [column 1, line

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62-column 2, line 5]. Card also discloses that data is sent to a host computer on a local network by a plurality of code readers which is known to be used by the packaging handling industry [column 1, lines 11-24; column 2, lines 16-22] Werb expressly discloses that RFID tags that contain means to store information can be updated by an interrogator are an improvement for bar codes [column 1, lines 24-25 and 41-49]. Therefore, these disclosures would have suggested to one of ordinary skill in the art to use RFID tags to include package data such as the location of the package within an RFID tag in order to allow the automatic updating of the location of a package as it travels throughout the distribution system. The method of using a URL to communicate with a web site on a global network is known to exist in the art and to use such a method to update the location of a package would have been obvious to one of ordinary skill in the art at the time the invention was made.

In regards to Applicant's argument that the cited references do not disclose any claim of the present invention, the Examiner does not agree. More specifically, the Applicant relies on for patentability a "location on a computer network" or "address" that is embedded on an RFID tag to allow a scanner to readily access a file on the network associated with the RFID tag even if the data collection system had never previously encountered the RFID tag. However, in view of claims 32 and 33, the Examiner does not understand how this was enabled in the specification. Claim 32 recites "...said address further comprises a Uniform Resource Locator, wherein said location further comprises a website..." and claim 33 recites "...wherein a customer of said package can access said

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website to obtain said updated information.” It appears to the Examiner that the only way the customer can access the website at the URL is to obtain the address from some other apparatus or system such as a database, not the RFID tag. Therefore, the claims do not appear to reflect the method the Applicant wishes to claim and are not in condition for allowance. The Applicant is asked to amend the claims to more clearly define the invention.

Claim Objections

6. Claim 34 is objected to because of the following informalities:

Claim 34 recites “comprise”. This word should be “comprises”.

Appropriate correction is required.

Claim Rejections - 35 USC § 112

7. The following is a quotation of the first paragraph of 35 U.S.C. 112:

The specification shall contain a written description of the invention, and of the manner and process of making and using it, in such full, clear, concise, and exact terms as to enable any person skilled in the art to which it pertains, or with which it is most nearly connected, to make and use the same and shall set forth the best mode contemplated by the inventor of carrying out his invention.

8. Claims 33-36 are rejected under 35 U.S.C. 112, first paragraph, as failing to comply with the enablement requirement. The claim(s) contains subject matter which was not described in the specification in such a way as to enable one skilled in the art to which it pertains, or with which it is most nearly connected, to make and/or use the invention.

Claim 28 recites the limitation “...receiving first information stored in a memory of [a] RFID tag, first information including an address identifying a location on a computer network corresponding to said RFID tag...” Claim 33 further recites “...wherein said address further comprises a Uniform Resource

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Locator..." Claim 33 further recites "...a customer of said package can access said website to obtain said updated information." The step of the method wherein the customer receives the address is not described in the specification to allow the use of the invention.

Claim 36 further recites "...wherein accessing step further comprises automatically launching a browser application and automatically loading said Uniform Resource Locator into an address field of said automatically launched browser application." The step wherein the customer receives the address and wherein the customer causes the action of the limitations recited in claim 36 are not described in the specification to allow use of the invention.

9. The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

10. Claims 28-42 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

Claim 28 recites the specification "...receiving first information stored in a memory of [a] RFID tag, said first information including...first data regarding [a] package...accessing second information from [a] location on [a] computer network, said second information including second data regarding said package; and updating said second information from said location on the computer network with said first data regarding said package." It is unclear whether the second information is being updated on the RFID tag or at the location on a computer network.

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Claim 45 recites the limitation "...wherein information is updated..." It is unclear as to what "information" is being referred to.

11. Claim 42 recites the limitation "second information". There is insufficient antecedent basis for this limitation in the claim.

It is unclear as to whether the previously recited "second information" is being referred to.

Claim Rejections - 35 USC § 103

1. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

2. The factual inquiries set forth in *Graham v. John Deere Co.*, 383 U.S. 1, 148 USPQ 459 (1966), that are applied for establishing a background for determining obviousness under 35 U.S.C. 103(a) are summarized as follows:

1. Determining the scope and contents of the prior art.
2. Ascertaining the differences between the prior art and the claims at issue.
3. Resolving the level of ordinary skill in the pertinent art.
4. Considering objective evidence present in the application indicating obviousness or nonobviousness.

3. Claims 28-31, 40-45, and 50 are rejected under 35 U.S.C. 103(a) as being unpatentable over Card et al. [US Patent 5 804 802 A] in view of Werb et al. [US Patent 6 150 921 A].

Regarding claim 28, Card discloses a method for reading a tag located on a package, comprising:

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interrogating said tag located on said package; receiving first information stored on said tag, said first information including an address identifying a location on a computer network corresponding to said tag and first data regarding said package; communicating with said location identified by said address; accessing second information from said location on said computer network, said second information including second data regarding said package; and updating said second information from said location on the computer network with said first data regarding said package. [column 1, lines 11-42; column 1, line 62-column 2, line 5]

Card does not expressly disclose an RFID tag or receiving the first information stored in a memory of said RFID tag, however, Werb discloses that such RFID tags used to track articles or items that have such a memory are well known and used in the art [column 1, lines 11-54, specifically lines 11-15 and 41-54]. Werb also discloses that RFID tags are known to those of ordinary skill in the art to be used as improvements of the tags used in the context of Card [column 1, lines 24-25].

Therefore, it would have been obvious to one skilled in the art at the time the invention was made to use RFID tags that are well known and used in the art as disclosed in Werb with the method of reading a tag on a package that is also well known and used in the art as disclosed in Card.

Regarding claim 29, Card and Werb disclose the method of Claim 28.

Card discloses wherein said tag is interrogated by a reader commanded by an operator of said reader and wherein said second information is updated

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automatically without requiring any further interaction by said operator. [column 1, lines 11-42]

Card does not expressly disclose that use of an RFID tag or a reader that reads RFID tags, however, Werb discloses that RFID tags and readers are well known and used in the art. [column 1, lines 15-23]

Claim 29 is rejected under 35 USC 103(a) since the motivations regarding the obviousness of claim 28 also apply to claim 29.

Regarding claim 30, Card and Werb disclose the method of Claim 28.

Card discloses wherein said second data comprises a detailed description of said package. [column 1, line 62-column 2, line 5]

Regarding claim 31, Card and Werb disclose the method of Claim 30.

Card discloses wherein said detailed description comprises a content of said package and a document associated with said content. [column 1, line 62-column 2, line 5]

Card and Werb do not expressly disclose wherein said document comprises one of a document on a toxicity of said content, a document on a radioactivity level of said content, a document on a clean-up requirement of said content, and a document of disposal data of said content.

However, these differences are only found in the nonfunctional descriptive material and are not functionally involved in the steps recited. The method of reading a tag on a package would be performed the same regardless of the data. Thus, this descriptive material will not distinguish the claimed invention from the prior art in terms of patentability. See *In re Gulack*, 703 F.2d 1381, 1385, 217

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USPQ 401, 404 (Fed. Cir. 1983); *In re Lowry*, 32 F.3d 1579, 32 USPQ2d 1031 (Fed. Cir. 1994).

Therefore, it would have been obvious to a person of ordinary skill in the art at the time the invention was made to have content such as the toxicity, radioactivity level, clean-up requirement, and disposal data because such data does not functionally relate to the steps in the method claimed and because the subjective interpretation of the data does not patentably distinguish the claimed invention.

Regarding claim 40, Card and Werb disclose the method of Claim 28.

Card does not expressly disclose wherein said memory of said RFID tag has a limited storage capacity and wherein said second data regarding said package supplements said first data regarding said package, however, Card does disclose that package tracking systems use a method to update package tracking information [column 1, lines 11-24; column 1, line 62-column 2, line 5].

Werb discloses that RFID tags and memories that are able to store limited new information by a RFID reader and that such RFID tags are used to track items are well known and used in the art [column 1, lines 11-23 and 41-54]

Therefore, it would have been obvious to one skilled in the art at the time the invention was made to use the method of updating package tracking information that is well known and used in the art as disclosed in Card with the RFID and attached memory store that is well known and used in the art as disclosed by Werb because one of ordinary skill would have known to use RFID tags with package tracking systems and that such RFID tags have memories that

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allow information on them to be updated. Given that Card discloses that package tracking systems use a method of updating package information as it moves throughout the package system, one of ordinary skill would have found it obvious to supplement the second data with the first data on the RFID memory.

Regarding claim 41, Card and Werb disclose the method of Claim 28.

Card discloses wherein said second information from said location on said computer network is further updated with information regarding a location of where said tag is interrogated [column 1, lines 11-24; column 1, line 62-column 2, line 5].

Card does not expressly disclose using an RFID tag, however, Card does disclose that package tracking systems use a method to update package tracking information based on its current location, however, Werb discloses that such RFID tags used to track articles or items that have such a memory are well known and used in the art [column 1, lines 11-54, specifically lines 11-15 and 41-54]. Werb also discloses that RFID tags are known to those of ordinary skill in the art to be used as improvements of the tags in the context of Card [column 1, lines 24-25].

Claim 41 is rejected under 35 USC 103(a) since the motivations regarding the obviousness of claim 28 also apply to claim 41.

Claim 42 is rejected under 35 USC 103(a) since claim 42 contains the same limitations as recited in claim 29.

Claim 43 is rejected under 35 USC 103(a) since claim 43 contains the same limitations as recited in claims 28 and 40 in combination.

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Claims 44 and 45 are rejected under 35 USC 103(a) since claims 44 and 45 contain the same limitations as recited in claims 41 and 29 respectively.

Claim 50 is rejected under 35 USC 103(a) since claim 50 contains the same limitations as recited in claims 28 and 41 in combination.

4. Claims 32-39, 46-49, and 51-54 are rejected under 35 U.S.C. 103(a) as being unpatentable over Card et al. and Werb et al. as applied to claims 28 and 45 above, and further in view of "Track by Tracking Number", as displayed on 18 February 1999 at www.ups.com/tracking/tracking.html (hereinafter "UPS").

Regarding claim 32, Card and Werb disclose the method of Claim 28.

Card and Werb do not expressly disclose wherein said address further comprises a Uniform Resource Locator, wherein said location further comprises a website, and wherein said second information is updated with said first data by executing a Java applet associated with said website, however, "UPS" discloses these limitations [see whole document].

It would have been obvious to one skilled in the art at the time the invention was made to use the method of reading a tag on a package as disclosed in Card and Werb with the system of a web site as shown in "UPS" because "UPS" discloses that the package tracking system and the web site operate together as a whole in order to track packages and update information on the packages in a new and easily accessible manner [see whole document, specifically "NOTICE" and "What is a Tracking Number?"], which is within the context of the disclosures of Card and Werb.

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Regarding claim 33, Card, Werb, and “UPS” disclose the method of Claim 32.

Card and Werb do not expressly disclose wherein a customer of said package can access said website to obtain said updated second information, however, “UPS” does disclose these limitations [see “What is a Tracking Number?”].

Claim 33 is rejected under 35 USC 103(a) since the motivations regarding the obviousness of claim 32 also apply to claim 33.

Regarding claim 34, Card, Werb, and “UPS” disclose the method of Claim 33.

Card discloses wherein said updated second information comprise a current information regarding a delivery status of said package [column 1, line 62-column 2, line 5]. “UPS” also discloses this limitation [see “What is a Tracking Number?”]

Regarding claim 35, Card, Werb, and “UPS” disclose the method of Claim 34.

Card discloses wherein said delivery status comprises one of a status on a location of said package and a status on an arrival time of said package. [column 1, line 62-column 2, line 5] “UPS” also discloses these limitations [see “You can instantly track...” and “What is a Tracking Number?”]

Regarding claim 36, Card, Werb, and “UPS” disclose the method of Claim 35.

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Card and Werb do not expressly disclose wherein said accessing step further comprises automatically launching a browser application and automatically loading said Uniform Resource Locator into an address field of said automatically launched browser application, however, "UPS" does disclose these limitations [see whole document].

Claim 36 is rejected under 35 USC 103(a) since the motivations regarding the obviousness of claim 32 also apply to claim 36.

Regarding claim 37, Card and Werb disclose the method of Claim 28.

Card and Werb do not expressly disclose wherein said address further comprises an e-mail address, however, "UPS" does disclose this limitation [see "Tracking by E-Mail"].

Claim 37 is rejected under 35 USC 103(a) since the motivations regarding the obviousness of claim 32 also apply to claim 37.

Regarding claim 38, Card, Werb, and "UPS" disclose the method of Claim 37.

Card and Werb do not expressly disclose the method further comprising launching an e-mail client and communicating an e-mail message associated with said first data regarding said package to a customer of said package through said e-mail client, said customer having said e-mail address, however, "UPS" does disclose these limitations [see "Tracking by E-Mail"].

Claim 38 is rejected under 35 USC 103(a) since the motivations regarding the obviousness of claim 32 also apply to claim 38.

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Regarding claim 39, Card, Werb, and "UPS" disclose the method of Claim 38.

Card and Werb do not expressly disclose wherein said e-mail message comprises one of a message on a location of said package and a message on an arrival time of said package, however, "UPS" does disclose these limitations [see "What is a Tracking Number?" and "Tracking by E-Mail"].

Claim 39 is rejected under 35 USC 103(a) since the motivations regarding the obviousness of claim 32 also apply to claim 39.

Regarding claim 46, Card and Werb disclose the computer network system of Claim 45.

Card discloses the computer network system further comprising:

a local network and a host server connected with said client computer via said local network wherein said client computer accesses said location by an operation of said application through said host server. [Figure 2; column 7, line 30-column 9, line 23]

Card and Werb do not expressly disclose a global network nor wherein said host server being further connected to said global network, however, "UPS" does disclose these limitations [see whole document]

Claim 46 is rejected under 35 USC 103(a) since the motivations regarding the obviousness of claim 32 also apply to claim 46.

Regarding claim 47, Card, Werb, and "UPS" disclose the computer network system of Claim 46.

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Card discloses the computer network system further comprising a wireless access point directly connected to said local network and wherein said host server is connected with said client computer through said wireless access point.

[Figure 2; column 7, line 30-column 9, line 23]

Regarding claim 48, Card, Werb, and "UPS" disclose the computer system of Claim 47.

Card discloses wherein said client computer is a handheld wireless device that is wirelessly connected to said wireless access point. [Figure 2; column 7, line 30-column 9, line 23, specifically column 8, lines 55-63]

Regarding claim 49, Card, Werb, and "UPS" disclose the computer system of Claim 48.

Card does not expressly disclose wherein said RFID reader is located within said handheld wireless device, however, Card does disclose that the handheld wireless device contains a tag reader [column 8, line 7-30].

Werb discloses that such RFID readers used with RFID tags used to track articles or items are well known and used in the art [column 1, lines 11-54, specifically lines 11-15 and 41-54]. Werb also discloses that RFID tags are known to those of ordinary skill in the art to be used as improvements of the tags used in the context of Card [column 1, lines 24-25].

Therefore, it would have been obvious to one skilled in the art at the time the invention was made to use RFID tags that are well known and used in the art as disclosed in Werb with the method of reading a tag on a package that is also well known and used in the art as disclosed in Card.

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Claim 51 is rejected under 35 USC 103(a) since claim 51 contains the same limitations as recited in claim 37 and 38 in combination.

Claims 52 and 53 are rejected under 35 USC 103(a) since claim 52 and 53 contains the same limitations as recited in claim 40.

Claim 54 is rejected under 35 USC 103(a) since claim 54 contains the same limitations as recited in claims 28 and 30 in combination.

12. Claims 55-56 are rejected under 35 U.S.C. 103(a) as being unpatentable over Maynard [US Patent 5 949 335 A]

Regarding claims 55 and 56, Maynard discloses a radio frequency identification (RFID) tag comprising a memory having a data storage area; and an RF interface coupled to said memory for communicating data between said memory and an external interrogator [column 1, line 34-column 2, line 20].

Maynard does not disclose wherein said memory includes a data field containing an address identifying a location on a computer network corresponding to said RFID tag, wherein said address further comprises a Uniform Resource Locator.

However, these differences are only found in the nonfunctional descriptive material and are not functionally involved in the steps recited. The communication of data between the memory and an external interrogator would be performed the same regardless of the data. Thus, this descriptive material will not distinguish the claimed invention from the prior art in terms of patentability. See *In re Gulack*, 703 F.2d 1381, 1385, 217 USPQ 401, 404 (Fed. Cir. 1983); *In re Lowry*, 32 F.3d 1579, 32 USPQ2d 1031 (Fed. Cir. 1994).

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Therefore, it would have been obvious to a person of ordinary skill in the art at the time the invention was made to include the nonfunctional descriptive material with the claimed invention because such data does not functionally relate to the steps in the method claimed and because the subjective interpretation of the data does not patentably distinguish the claimed invention.


Conclusion

Any inquiry concerning this communication or earlier communications from the examiner should be directed to George C Neurauter, Jr. whose telephone number is 703-305-4565. The examiner can normally be reached on Tuesday 1-2 pm EST.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, David Wiley can be reached on 703-308-5221. The fax phone number for the organization where this application or proceeding is assigned is (703) 872-9306.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is 703-746-7240.

gcn



DAVID WILEY
SUPERVISORY PATENT EXAMINER
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